IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEALNO.1122 OF 2005

Dnyndev Rajaram Garad & anr. ..Appellants
Versus
Shri Santosh Sandipan Bagal and Anr. ..Respondents

Mr.M.A.Utgikar for appellants

CORAM : P.V.KAKADE, J.

DATE : 6TH OCTOBER, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order dated passed by Addl. District Judge, Solapur dated 3.1.2005 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Madha dated 8.11.1996 decreeing the suit for perpetual injunction against the defendants.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiff has filed the suit for perpetual injunction simplicitor against the defendants in respect

of Well and trees located on the portion of well situated in the land Gat No.263/B/1 of its Eastern side of village Laul, Tal. Madha. The defendants contested the suit, inter alia, denying the allegations made by the plaintiff on the ground that the suit well was in his land and therefore, the plaintiff suit was not genuine and sought its dismissal.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that he was the owner and possessor of the suit property and the defendants were interfering his peaceful possession and as such the suit came to be decreed. The appeal was carried to the District Court. The Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the trial judge were legal and proper and dismissed the appeal. Hence the present appeal.

4. Evidently there is no substantial question of law involved in this appeal. The only dispute sought to be raised on behalf of the appellants is with regard to the location of the disputed Well. It is evident from the record that the plaintiff has purchased the land

No.263/B area 2 H 39 R in auction and in the year 1973/74 he dug the well by spending certain amount. It is an admitted position that when Plaintiff had purchased 8 acres of land on Eastern side in auction at that time it was non-irrigated land and there was no well adjacent to the land of 8 acres. There is another land of the plaintiff being land Gat No.263/A. There is another well in land Gat No.263/A. An attempt is allegedly made on behalf of the defendants to show that on the basis of water of well situated in Gat No.263A the other land is being irrigated. It is true that the plaintiff was not in position to give satisfactory evidence as to whether and from which resources he spent amount of Rs.20,000/= to dug the well. However, it is quite evident that admittedly there were two wells in the land of the plaintiff-respondent, in fact the lower appellate court judge thought it fit to appoint Court Commissioner and Surveyor was appointed in order to find out the true state of facts. However, the Court Commissioner’s report and map have not found satisfactory and therefore, discarded from consideration for the cogent reasons given by the appellate court. The defendants failed to prove that the disputed well in question was not belonging to the plaintiff and as such

the suit came to be decreed by both the courts by recording concurrent findings to that effect. I do not intend to interfere with the concurrent findings recorded by both the courts, as those are legal and proper based upon the available evidence on record. In view of this position, the appeal has no merits and stands dismissed.